

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0038P

**Adjusted Gross Income Tax
Calendar Years 1995, 1996, and 1997**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer is incorporated in Illinois with commercial domicile in Indiana.

Taxpayer was audited for calendar years 1995, 1996, and 1997 that resulted in assessments in 1996 and 1997 and a refund in 1995 because the taxpayer failed to take a credit for a quarterly payment during that year. Taxpayer obtained a refund upon filing the 1995 return. Upon audit it was discovered that the taxpayer failed to take credit for a \$30,000 estimated EFT payment.

The auditor gave the taxpayer credit for the payment that resulted in a refund of \$22,165.74 in 1995. 1996 and 1997 incurred additional tax due for changes in the payroll and sales factor. The issue was also present in 1995 which reduced the refund amount from \$30,000 to \$22,165.74.

Taxpayer states it is entitled to interest from the time the department held the overpayment, therefore it protests the interest and penalties assessed in 1996 and 1997.

I. **Tax Administration** –Penalty

DISCUSSION

Taxpayer was assessed a negligence penalty for failure to correctly apportion the sales and payroll factors.

Taxpayer, in letters dated January 5, 1999 and February 16, 1999 protested penalties assessed because there was no negligence or intentional disregard of Indiana tax regulations, and since the department was already holding more than the additional payments required for 1996 and 1997, penalizing them in the situation makes no sense.

The taxpayer requested the auditor apply the \$30,000 payment to the assessment of 1996 and 1997 in order to avoid penalty and interest for those years. Each year, however, stands alone. In addition, the taxpayer requested the department refund the overpayment on its 1995 tax return. The department refunded the amount requested. Not until an auditor reviewed the taxpayer's records, was the error found.

FINDING

Taxpayer's protest is denied.

II. **Tax Administration** - Interest

DISCUSSION

Taxpayer protests the interest assessed and states it did not receive interest for the refund year.

The department has applied the overpaid tax plus interest correctly to the 1996 and 1997 years and has refunded the difference.

The audit resulted in a refund for 1995 and assessments for 1996 and 1997. The department applied the \$22,165.74 overpayment plus interest in the amount of \$3,030.33 to the outstanding liabilities for 1996 and 1997 consisting of \$5,975.89 tax, \$597.59 penalty, and \$725.46 interest and \$2,179.94, tax, \$217.99 penalty, and \$112.05 interest respectively which resulted in a refund of \$15,387.15. The department has already allowed interest for the overpayment in 1995.

FINDING

The issue is moot, as the taxpayer has already received interest for 1995.

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CONCLUSION

Taxpayer's protest is denied in Issues I and II.